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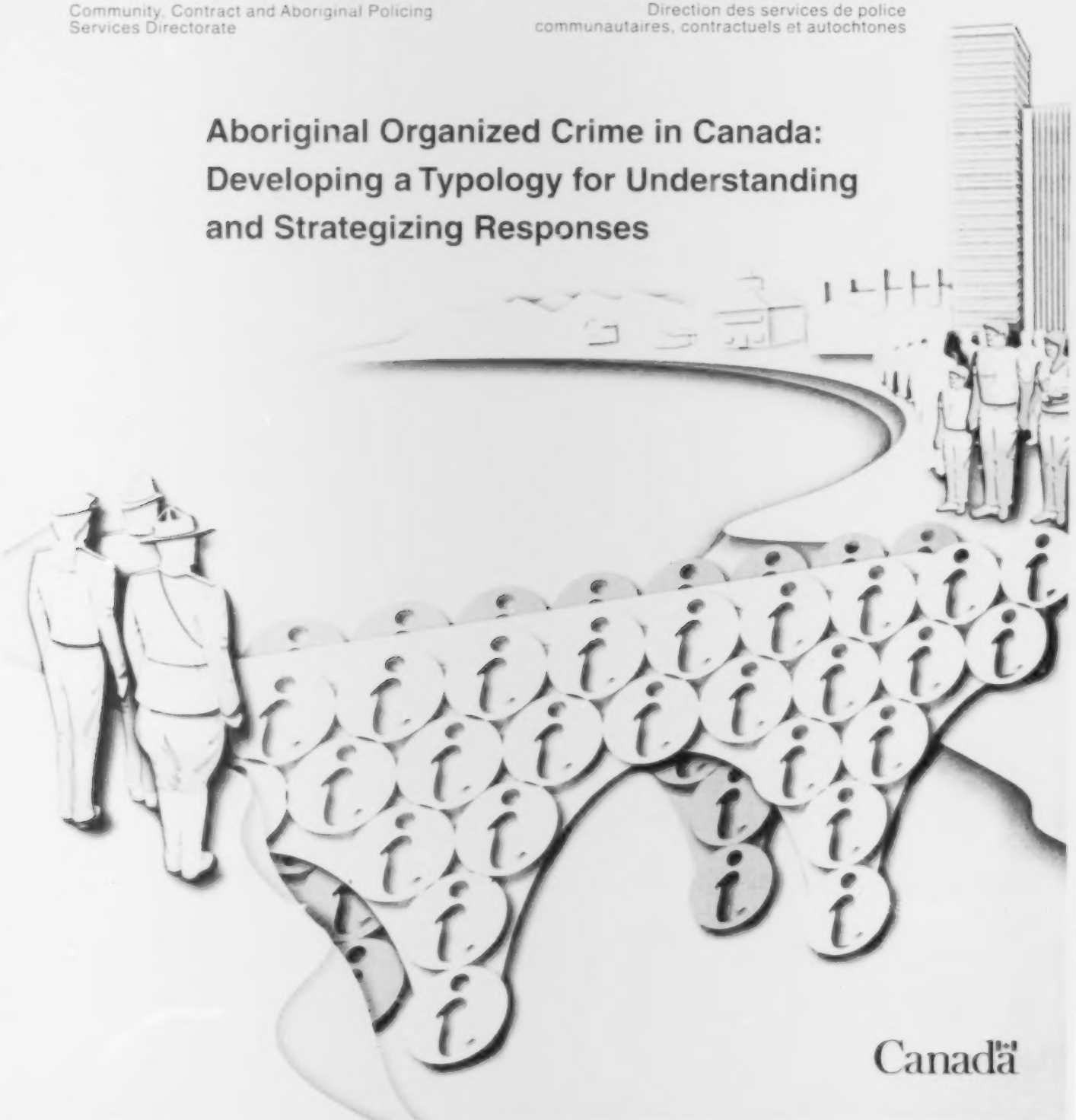
Aboriginal Organized Crime in Canada: Developing a Typology for Understanding and Strategizing Responses



Canada

Aboriginal Organized Crime in Canada: Developing a Typology for Understanding and Strategizing Responses

by

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Executive Summary

Scholarly attention to the phenomenon of organized crime in Canada is limited and not well-developed generally. In large measure, the relatively small body of research on the topic may be linked with the difficulties implicit in the study and analysis of an activity whose participants have little other than direct adverse interests in being studied, and who work assiduously to disguise and obscure their identities, practices and processes. Within the small literature on organized crime, only a very small percentage considers aboriginal participation in organized illicit activities, and these analyses tend to assume that those definitions and assumptions which inform the study of organized crime generally will also apply or "fit" its study among aboriginal communities.

The present study explores the theory and, to the greatest degree possible given the limitations of the data, the reality of aboriginal participation in what may be defined as 'organized crime' in Canada, engaging the possibility of a definition of 'aboriginal organized crime' and the proposal of a 'typology' of participants. In considering the development of a definition, the researchers expand on Beare's definition of organized crime to include the dimension of motivations - whether social, political or economic - which theorists agree are crucial in understanding organized crime activities, but which do not appear in current definitions of the term. This addition is shown to be especially important for the study of aboriginal involvement in criminal activities in general, and organized crime in particular, as extant data and analyses of crime trends within aboriginal populations suggest strongly that profit is a rare and unusual factor motivating such activity. Given the consistent emphasis in the organized crime literature on profit as the fundamental mobilizing factor behind a wide range of illicit pursuits, this would seem to constitute an important deviation in traditional understandings of organized criminal activities and those who engage in them. In addition to amending Beare's definition to acknowledge motivations, the definition of 'aboriginal organized crime' is further altered to

address the unique issues of context informing these activities as well as the nature of the relationships between those participating in aboriginal organized crime networks. Informed by this definition, the paper explores current patterns of offending among the aboriginal population, arguing that organized activities constitute only a very small percentage and, in many respects, unique permutation in those patterns. From here, following careful qualifications concerning the use of typologies and the dangers of unfounded generalizations about organized crime, its origins and participants, the researchers move into a proposal of a typology of aboriginal participants in organized criminal activities. This typology contains four types which are positioned on a continuum defined by motivations and which, based upon the current state of knowledge of aboriginal participation in organized crime, include the (1) Activist/Nationalist Type; (2) Random/Opportunistic Type; (3) Activist/Opportunistic Type; and (4) Criminal/Opportunistic Type. The motivations which are reflected in the titles given to each type exist on a continuum within that type, and are part of the larger continuum upon which all the types reside. This larger continuum is bounded by profound nationalism/activism on one end, and almost pure, instrumentalist opportunism on the other; each type has a more or less precise incipience and conclusion on this continuum, and as one moves within the smaller continuum of each type, the motivations and sentiments it contains will progress toward the motivations and sentiments inherent in the type which follows. The continuum may be envisaged as follows:

nationalist/ activist	random/ opportunistic	activist/ opportunistic	criminal/ opportunistic

There may also be some overlap between the types, as individuals may originate their engagement in illicit activity in one type, and gravitate over time into another. For example, an individual may start out as a random/opportunistic, and progress into a criminal/opportunistic – a range of combinations and permutations may emerge, and it is likely that, as knowledge of aboriginal involvement in organized illicit activity progresses, additional types will be added to the typology.

Following a detailed elucidation of each type, the paper raises the important issue of state responses to aboriginal participation in organized crime. Here it is argued that prevention

through social justice is a more promising strategy than reaction through criminal justice; that is, broad-based social reform and the honouring of treaty and aboriginal rights holds the potential to remove the majority of motivations for aboriginal participation in such activities, freeing the police to respond to the most compelling and intractable criminal elements.

Introduction

> Clad in a loin cloth, a Canadian member of the militant Mohawk Warrior Society told a U.S. judge Friday that his "ancestors would react" to sentences handed down to five tobacco smugglers....Ellwyn Cook, 40, and the four other defendants insisted their aboriginal rights included taking tobacco into Canada.[1]

The question of aboriginal participation in what have been traditionally understood as 'organized criminal activities' has received limited attention in Canada or the United States. In some respects, this is not surprising, insofar as the field of organized crime in Canada in general suffers from limited academic attention and analysis. And yet, given the ongoing concern about rates of aboriginal crime and disorder, and the over-representation of First Nations people in the Canadian criminal justice and correctional systems, it is curious that this aspect of aboriginal conflict with the law has largely escaped our attention. This seems especially odd given the degree to which such activities as 'tobacco smuggling' and 'aboriginal gangs' appear to have captured the popular imagination and the attention of the media, fitting nicely into the simultaneously romantic and pejorative views held by many Canadians of aboriginal peoples.[2]

It seems likely that the failure to explore 'aboriginal organized crime' is a result of the nature of the research focus historically in the field, which has tended toward subjects and definitions which do not 'fit' easily with aboriginal involvement in what may be understood as organized crime, and the difficulty accessing information or relevant data concerning this involvement. As noted by Beare, there is little incentive to participants in marginal or criminal activities in

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[1] "Mohawks sentenced in smuggling case", ***The Ottawa Citizen***, July 17, 1994, p.A8.

[2] Such as that evidenced in the opening quote, above.

general to divulge trade secrets[3], and in the context of the aboriginal trade in contraband in particular, the clear political and activist overtones to that participation reinforce and elevate the code of secrecy traditional to such organized activities. Given this, evidence concerning the form and functioning of organized crime is thin on the ground, and the concomitant implications of sparse data for solid theorizing and the development of complete definitions of the phenomenon have been realized.

This paper will explore the theory and, to the greatest degree possible given the limitations of the data, the reality of aboriginal participation in what may be defined as 'organized crime' in Canada, engaging the possibility of a definition of 'aboriginal organized crime' and the proposal of a 'typology' of participants. The latter, defined largely by the motivations which inform aboriginal involvement in this activity, may assist understanding of the phenomenon and the development of more appropriate and effective responses to it. Central to these goals is an elucidation of the general trends in the definition of organized crime, as well as of current patterns of aboriginal crime and disorder, enabling a determination of those locations where these two dovetail in the phenomenon known as 'aboriginal organized crime'.

Theorizing "Organized Crime": Perspectives and Definitions

The topic of organized crime in Canada is not well researched nor well-understood. There is a very limited research base from which to understand the subject in general terms, and even less so for comprehending and theorizing about the contributions of aboriginal individuals or groups to the phenomenon. This is not only a consequence of the secrecy around these forms of illicit activities to which Beare refers above, but also to the absence of a clear definition of those types

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[3] Margaret Beare, ***Criminal Conspiracies: Organized Crime in Canada*** (Toronto: Nelson,1998), p.22.

of crimes, criminals or processes which may be distinguished as being 'organized crime'.[4] As Beare and Naylor point out, the term encompasses very wide and diverse types of criminal activity, much of which is sufficiently serious in magnitude that organized crime has come to refer at once to "all serious crimes" and thus to nothing.[5] The implications of this imprecision in terminology are not small:

> If this were a mere issues of semantics, no one would ponder the issue – this is not the case, however. There are direct policy and law enforcement implications to the quest of actually attempting to 'understand' the phenomena. This is true not only or even mainly because of the additional police powers and legislative consequences of being seen to be a member of an organized crime operation. More importantly, the term may incorporate what in fact might be very diverse types of criminal activity that therefore ought to be responded to with diverse regulatory and/or enforcement strategies.[6]

Thus it would appear that while the task of definition is neither easy or simple, to the degree that we must understand the concept before we can begin to address it, definition is a necessary and important undertaking.

Even a brief review of the literature and research in this area reveals quickly that the development of a single, overarching definition which can encompass all forms of organized crime has proven illusive. At the same time, if Beare and Naylor are correct, and organized crime activity is an umbrella concept which covers a wide range of quite disparate activities, the achievement of a common definition may run the risk of doing more to obscure the nature of those activities than to illuminate organized crime as a category of criminal behaviour. At least

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[4]Margaret A. Beare and R.T. Naylor, ***Major Issues Relating to Organized Crime: Within the Context of Economic Relationships***. Paper prepared for the Law Commission of Canada, April 1999, p.4; Petrus C. Van Duyne, "The phantom threat of organized crime", ***Crime Law and Social Change***, 24 (1996):343; Rodney T. Stamler, "Organized Crime", in Rick Linden (ed.), ***Criminology: A Canadian Perspective*** (Toronto: Harcourt Canada, 2000):430.

[5] Beare and Naylor, ***Major Issues Relating to Organized Crime,*** ibid.

[6] Ibid.

part of the difficulties around conceptualizing the umbrella concept of organized crime arise from the reality that much of the research in the field focuses on specific instances or case studies of what may be deemed the 'classic' forms of organized criminal behaviour, most notably the old-style mafia or "family business". Consistent with this approach, we have a range of definitions of particular types of organized crime activities, but as yet await the collection of these into a universally-accepted definition which is capable of both general application and sufficient detail to respect the variations across individual cases or activities.

While acknowledging that the task of definition has proven difficult, the research generally suggests that organized crime must be understood less as a specific type of crime than as a process or method by which specific types of crimes are committed.[7] Central to that process would seem to be some form of organization across those involved in perpetrating the illegal activity - the debates, however, are very much around the degree and direction of organization evidenced across different types of organized crime. Generally speaking, these debates seem grounded at either end by those who view the phenomenon from a corporate model perspective, and those preferring a network model.[8] Those who support a corporate model view organized crime as manifesting a corporate structure that is centralized, hierarchical and bureaucratic.[9] While this view seems to have dominated much of the early work in the field, more recent research suggests that the top-down, highly rigid organizational structures assigned to such traditional organized crime groups as the Cosa Nostra or Mafia may not be accurate.[10] This position is consistent with a network model of organized crime, wherein the structures of organized crime groups are characterised as diverse, decentralised associations in which

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[7] Beare, Criminal Conspiracies, pp. 14-15; Stamler, pp.431-432;

[8] Schloenhardt, "Organized Crime and the Business of Migrant Trafficking" 32 ***Crime, Law and Social Change*** (1999), p.214.

[9] Ibid.

[10] The notion of the highly organized, rigidly regulated crime family is most often associated with Donald Cressey in his work ***Theft of the Nation*** (New York: Harper and Row, 1969).

relations between core actors are defined horizontally.[11] Here, scholars such as Haller have suggested that much of what might be referred to as organized crime is less like complex organizations than a series of more or less formalized partnerships.[12] Albini appears to concur with Haller, noting that while the organized or syndicated crime group certainly has "rational" characteristics, it is more accurately portrayed as a "loosely-knit system of patron-client or network relationships than as the manifestation of a rigidly organized, bureaucratic one".[13]

Beare's Canadian work also suggests that a horizontal organization is increasingly more likely than a hierarchical one, but she qualifies this position with a perception that organized crime structures will tend to vary depending upon the activities to which they are directed.[14] Even across this variation, however, Beare perceives that the bulk of organized criminal operations may be seen to manifest three central, common characteristics, namely:

- a structure that allows individual criminals to be removed and substituted without jeopardizing the viability of the criminal activity
- criminal activity committed via continuing criminal conspiracies (i.e., ongoing, repetitive criminal activity rather than one or two criminal acts committed for profit
- the capacity to operate through political corruption and/or the potential for violence[15]

Drawing together these qualities, Beare proposes the following definition of organized crime:

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[11] Schloenhardt, "Organized Crime and the Business of Migrant Trafficking", p.214.

[12] Mark H. Haller, "Illegal Enterprises: A Theoretical and Historical Interpretation" 28(2) ***Criminology*** (1990), p.229.

[13] Joseph L. Albini, Donald Cressey's Contributions to the Study of Organized Crime: An Evaluation", ***Crime and Delinquency***, 34(3) July (1998):350.

[14] Beare, ***Criminal Conspiracies***, p.15.

[15] Ibid.

> Organized crime is *ongoing activity*, involving a *continuing criminal conspiracy*, with a *structure greater than any single member*, with the potential for *corruption and/or violence* to facilitate the criminal process [emphasis in the original][16].

As a definition of the category of deviance known as organized crime, Beare's definition offers a good point of departure. For purposes here, however, two qualifications on this construction of the term are necessary. First, some concern coagulates around the use of the term 'conspiracy' in Beare's definition, insofar as this would seem to imply a purposive knowledge on the part of individual participants not only of their role in, and contribution to, the ultimate 'goal' of a particular organized criminal activity. It seems likely that, especially in the arena of what has been deemed 'aboriginal organized crime' as discussed and described below, that such uniformity of intention across participants may not characterize most organized crime. For while those who are the most conspicuous and consistent participants may be expected to share common and informed intentions, as one progresses to the more marginal 'conspirators', participation becomes much more ad hoc and unsystematic than is implied in the term 'conspiracy'. For example, while it is unquestioned that there would not be a cigarette trade in the absence of customers for 'smuggled smokes', can we say that those who enter aboriginal reserves to purchase tax-free cigarettes are willing and conscious conspirators? Similarly, those peripheral participants, who may include aboriginal people who work briefly or on only one or two occasions running cigarettes, may not share in an implied common goal at all. Indeed, such agreement may be quite absent in the core of the 'conspiracy' as well, where the goals may be similar, but far from commonly held - each individual may be pursuing not only idiosyncratic aims, but ones which both diverge from, and may even conflict with, those held by their putative 'co-conspirators'.

Conspiracy also obscures the degree of formalization which characterizes the social and other relationships which are taken together to comprise most organized crime activities. While there can be little doubt that, at the center of most organized crime activities there is a relatively high

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[16] Ibid.

degree of formalization of relationships, as one moves outside this core, it is likely that the relationships are far from formal. Indeed, there is an argument to be made that some types of organized crime are less organized than coincident – that is, those who move liquor or cigarettes across the border to evade taxes and duties may all be participating in the same general activity, but this may not mean that they are coordinated and integrated in that pursuit. Rather, they are all engaging the same basic process for possibly quite variant reasons and goals, and their success in this category of activities implies both competition and some degree of complicity which may be more or less overt. And while researchers such as McIllwain assert that the "social networks" created by organized crime actors to enable "the provision of goods and services" "create a social system of organized crime" which is remarkably consistent and resilient over the time and location of organized crime activity[17], this says little about the nature or degree of formalization popularly perceived to accompany those networks and organized crime generally. It also does little to help us understand how the actors themselves see these networks, their loyalties to them, and the degree to which they perceive their creation of, and participation in, those networks as a 'conspiracy'.

While the perceptions of those who participate in organized crime may seem secondary, the question of what motivates entry into a social network of organized crime is far from irrelevant or unimportant. Beare's definition does not address motivations – an interesting oversight given her acknowledgement that understanding why people engage in this form of activity is crucial to understanding not only the nature and content of organized crime activity, but also in devising responses to it.[18] The challenge, of course, is how one might include this factor in a definition of organized crime. Insofar as organized crime is seen less as a type of crime than as a "process – an activity possessing certain attributes and characteristics"[19], one way to incorporate the admittedly important matter of motivations may be through the simple recognition of

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[17]Jeffrey Scott McIlwain, "Organized crime: A social network approach", 32 ***Crime, Law and Social Change*** (1999), p.319.

[18] Ibid., p.18.

[19] Peter A. Lupsha, quoted in Beare, ibid., p.14.

motivations as one such attribute. This would seem to be an especially important addition to any definition which might be applied to the phenomenon of 'aboriginal organized crime', given that much, if not all, of aboriginal involvement in 'organized crime' is linked by both participants and commentators to political activism and nationalism which is both a conscious and unconscious response to historic and current oppression. If 'aboriginal organized crime'is motivated by a need to redress the marginalization and purposive under-development of First Nation communities, a consideration of 'motivations' would seem to be central to devising effective strategies for ameliorating this type of activity.

Thus, for purposes of this paper, preliminary modifications to Beare's definition of organized crime might appear as follows (changes are in bold font):

> Organized crime is *ongoing activity* **motivated by political, social and/or economic conditions or ends (or some combination thereof), which is articulated through a network of both formal and informal cooperative social relationships** whose *structure is greater than any single member*, with the potential for *corruption and/or violence* to facilitate the criminal process.[20]

Having made these minor modifications to Beare's definition, the question remains: to what degree does this definition apply to the current trends in crime and disorder evident in First Nations communities? It is to a consideration of the presence of organized crime as defined above in aboriginal communities that we now turn.

How Organized is the Crime? The Demographics of Crime and Disorder in First Nations in Canada

Requisite to a sound appreciation of the nature and degree of participation in organized crime activities among aboriginal people in Canada, it is necessary to contextualize 'aboriginal organized crime' in terms of its magnitude both as one part of organized crime in Canada

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[20] Beare, ***Criminal Conspiracies***, ibid, p.18.

generally and within rates of crime and disorder among First Nations. As will be seen, aboriginal organized crime accounts for a modest portion of criminal activity in both contexts.

As observed in an earlier paper focusing on aboriginal involvement in what may be termed organized crime activities, academic research into organized crime in Canada is relatively limited[21], with the work of Beare at the Nathanson Centre for the Study of Organized Crime and Corruption leading the field. In her characterization of the phenomenon of organized crime generally, Beare observes that "[o]rganized crime in Canada involves a wide range of profit-making activities".[22] Included in these activities are:

- [importation and trafficking in] narcotics
- extortion
- loan-sharking
- white collar crimes, frauds and scams
- smuggling of cigarettes, alcohol, guns and other weapons
- pornography and prostitution
- credit-card theft and frauds
- murder and contract killings
- gambling (both illegal operations and organized crime activities that take place within legal gambling facilities.[23]

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[21] The literature and research consulted ranges from the theoretical and historical to more grounded efforts to describe the field of study and the phenomenon of organized crime. Much of these resources focus upon particular instances of organized crime, i.e., drug trafficking, the mafia or 'family crime businesses', or prominent actors in organized crime historically. In addition to these academic sources were those originating with state or law enforcement organizations, such as the Criminal Intelligence Service Canada, and a wealth of media reports, which must always be approached with some measure of caution and mindful of the goals and limitations of media research (see, for example, Ronnie Lippens, "Rethinking organizational crime and organizational criminology", ***Crime, Law & Social Change***, 35 (2001):319-331; Haller, "Illegal Enterprise..."; Beare, ***Criminal Conspiracies: Organized Crime in Canada***).

[22] ***Criminal Conspiracies***, ibid., p.74.

[23] Ibid., p.75.

She attributes these activities to four categories of groups, which include Aboriginal organized crime groups, Outlaw Motorcycle Gangs, traditional Italian Mafia crime groups (which as a category also contains "ethnic" groups such as Asian Triads and Vietnamese gangs), and finally, Columbian cartels and emerging groups from Russia and Nigeria.[24] Regardless of their ethnic or national origins, these groups of organized criminals are deemed to share one fundamental motivation for their engagement of organized crime activities: Profit. As will be seen below, the consistent assertion on the part of a number of researchers and commentators that profit is the primary motivation behind organized criminal activity may be a over-simplification, especially in the context of aboriginal participation in such activities.

Recent inquiries reveal that the categories of organized crimes proposed by Beare is not exhaustive. The Criminal Intelligence Service of Canada reported as recently as 2001 that contraband smuggling is expected to expand to include exploitation of the fledgling Canadian diamond trade. The quality of the Canadian stones, combined with the stability of the international market, the difficulty in tracking ownership of gems, and the high profit to size ratio render the industry vulnerable to exploitation by organized criminal groups. The proximity of the Canadian market to the United States, which consumes roughly 50% of the world's diamonds, is a further incentive to organized crime groups.[25]

The penetration of Asian-based organized crime groups into Canada has further altered the organized crime landscape here. These groups, which are located primarily in the urban centres of Vancouver, Edmonton, Montreal and Toronto, are active in most of the criminal activities outlined by Beare, above, but appear to focus primarily on the trafficking of heroin and the smuggling of illegal migrants. Their success in these endeavours has been remarkable, and is probably primarily a function of their willingness to seek out and link up with local criminal

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[24] Ibid.

[25] Criminal Intelligence Service Canada, ***Annual Report 2001***, p.4 at http://www.cisc.gc.ca/AnnualReport2001/Cisc2001/contraband2001.html

groups, such as youth gangs and similar 'amenable others'. For example, clear and direct linkages appear to be in place between Asian-based organized crime groups and Vancouver's Asian gangs and, as early as 1999, three high-ranking members of Winnipeg gangs were included among the 35 people arrested in a police operation successfully targeting an Asian-based organized crime group's cocaine trafficking ring in that city.[26] While it is not clear from the CISC reports, it is likely that at least some of the three "gang ringleaders" arrested were leaders of the prominent Manitoba Aboriginal gangs, the Manitoba Warriors or the Posse, as these are the dominant gangs in the city and, at least in the case of the Warriors, are believed to have ties with Asian-based organized crime groups.[27]

Linkages between Asian-based organized crime groups and some of those active in aboriginal criminal activity are not restricted to gangs. There is little doubt that some aboriginal territories and reserves situated on the Canada-United States border have served as conduits for the largely Asian-based traffic in illegal migrants. Akwesasne has been central in many of the reported cases involving human smuggling:

> A Globe and Mail report of October 1996, for example, reported that the U.S. Border had intercepted 299 'deportable aliens', moving north and south on the perimeters of the [Akwesasne Mohawk] reservation, in the 12 months from October 1995. Other reports in the Canadian media constructed a picture of "elaborate international networks" based in South-east Asia, especially Sri Lanka or Europe, moving "thousands of illegal immigrants into Canada", and spoke of the emergence of "a new breed of global outlaws".[28]

That Akwesasne should prove to be a 'hotspot' for the smuggling of migrants is not surprising,

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[26] Canadian Criminal Intelligence Service Annual Report, "Asian-based Organized Crime", ibid., p.4.

[27] See Beare, ***Criminal Conspiracies***, p.77.

[28] Ruth Jamieson, Nigel South, and Ian Taylor, "Economic Liberalization and Cross-Border Crime: The North American Free Trade Area and Canada's border with the U.S.A., Part II", 26 ***International Journal of the Sociology of Law*** (1998), p.297

insofar as this community has long been a corridor for cross-border trades in cigarettes, alcohol, drugs and other commodities. And yet, while the smuggling of cigarettes and alcohol could be rationalized, if not forgiven, by the Canadian public as the understandable outcome of unreasonable state policies on taxation, there was a significant unease around the drug trade which was rapidly eclipsed as the public both within and outside Akwesasne became aware of the increasing cross-border trade in human beings. This discomfort grew when an elderly woman drowned during an illegal crossing from Canada to the United States on Akwesasne territory[29]:

> [another] aspect of the response to 'people-smuggling' is the inchoate sense that the translation of human beings themselves into cargo, or into mere commodities in an international criminal smuggling operation, is itself a new kind of post-Fordist crime, where even people can be transformed into commodities in criminal markets. For many Canadians, nurturing a continuing attachment to orderly governance and the idea of a 'just society' (as a marker of Canadian difference), this kind of cross-border trading is particularly problematic.[30]

This quote, while compelling and probably quite accurate in its depiction of many Canadian reactions to the cross-border trade in human cargo, also contains some problematic assumptions and raises some interesting questions about the motivations behind aboriginal participation in organized criminal activity. The first of these assumptions is that somehow the idea of commodification would offend Canadians, but not necessarily the aboriginal people whose territory provides the conduit for the commodity. While the denial of this possibility is not explicit, it is certainly implicit in the failure to include aboriginal people in the statement. It may be that the authors, writing from the perspective of outsiders, may not have intended the oversight, assuming that the citizens of the Mohawk Nation communities in particular perceive themselves as "Canadians", which is not always the case. It may also explain at least in part their observation of Canadian attachment to the notion of the 'just society' - a concept which may

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[29] Criminal Intelligence Service Canada, Annual Report 1997, p.2 at http://www.cisc.gc.ca/AnnualReport1997/CISC1997en/aborig.html

[30] Jamieson, South and Taylor, "Economic Liberalization and Cross-Border Crime...", p.298.

well be realized in theory, despite rather getting lost in practice - especially in regard to Canadian attitudes and policies toward Aboriginal peoples.

It is in the idea of the 'just society' that we find an easy transition to a focus on aboriginal organized crime. There are few conscious citizens in Canada who are not at least conversant with the history of state policies in relation to aboriginal nations, and the forced marginalization and underdevelopment which have left many communities impoverished and riven with dysfunction and social problems. To say that many aboriginal people, especially youth, are estranged from Canadian society and authority is an understatement, and when this is coupled with poverty and blocked opportunity, engagement in organized criminal activity may well become a rational choice. In some measure, too, it may become a form of political protest. For some commentators, such as Lupsha, the idea that blocked upward mobility could inspire participation in organized crime has little value. Focusing his analysis on immigrant populations who, like aboriginal people, often face marginalization, racism and conflict with the dominant cultural norms about success, justice and the proper routes to these ends, Lupsha argues that "entrance to organized crime was a self-choice based on individual skills and a personal rationalization which perverts traditional American values and culture":

> In our view the organized criminal does not seek, and has not sought, traditional status and respect values because he has his own world view of our culture which makes him right and the rest of us suckers... From his perspective the organized criminal is correct, and success has replaced respect as a value. Power wealth and the fear it can generate replaces the positive deference of any 'good society'.[31]

For Lupsha, then, participation in organized crime is a personal choice made, not by individuals who have rejected the status quo which has rejected them, but by those who have internalized a perverted construction of that status quo and the values which inform it.[32] That is, those participating in organized criminal activities are seen to have embraced a 'revised' version of the

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[31] Peter A. Lupsha, "Individual Choice, Material Culture and Organized Crime", 19(1) ***Criminology*** (1981), p.4.

[32] Ibid., p.22.

American dream, namely, that "only suckers work, and ...one is at liberty to take suckers and seek easy money..."[33] The problems with this position are myriad. At base, Lupsha's position denies any true attention to the larger social structural context of the 'rational choice' beyond lip service to a rather romanticized 'wild west view' of American culture which he at one moment condemns as accepting and condoning lawlessness, then at another reifies as problematic only when outsiders pervert or exploit some aspects of that culture. In this way Lupsha, without completely acquitting American cultural values and social structures for creating what he appears to accept are systemic structural inequalities, nonetheless places the fault for organized crime on those who would challenge those inequalities by perverting pervertable American values. In other words, the fault for this form of deviance remains with individuals, suggesting that the system is fine as it is, and need not be changed; provided those at the bottom follow the rules set by those above for moving up, organized crime should not be a problem. This not only fails to appreciate that there is a larger social, economic and political context for all social phenomenon, but denies the opportunity to create new conceptualizations or constructions of social problems which may offer alternative, more promising modes of response to those problems.

There is also embedded in the positions of Lupsha and others who write in the area of organized crime a curious tendency to focus culpability firmly on the individual and a perceived conscious and freely-made choice to engage in organized criminal activity. While this may arise in part from a rather conservative tone which seems to characterize much of the work in this area[34] which denies social and economic constraints as important qualifiers on the options available to people, it may also be linked to the reality that the law focuses on individuals and emphasizes

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[33] Ibid.

[34]The work of Jamieson et al constitutes an important deviation in this trend, as she and her colleagues appear to entertain a much more complex social analysis of the phenomenon of organized crime. See for example, Ruth Jamieson, Nigel South and Ian Taylor, "Economic Liberalization and Cross-Border Crime: The North American Free Trade Area and Canada's Border with the U.S.A. Part I", 26 ***International Journal of the Sociology of Law*** (1998), Pp.245-272.

free choice in determining criminal responsibility and guilt. That this concentration is sensible in a legal context, however, does not make it so in theorizing approaches to understanding organized crime. This is especially so in that, increasingly, organized crime is becoming understood as fueled through social networks, and while these are necessarily comprised of individuals, to emphasize that aspect at the expense of the social element is problematic. Individual motivations and choices are certainly important, and they exist on a continuum: there will be those who make calculated and conscious choices to participate in organized criminal networks for their own profit, while others may be drawn into such activities by social or economic pressures which present precious few alternatives. If we are to understand the motivations, and accurately assess the choices, it is necessary to understand the larger context informing these things; such knowledge would also seem requisite to developing effective strategies for responding to this form of criminal activity.

Framing a context for choice: Socioeconomic and Demographic Trends and Patterns of Offending in Aboriginal Communities[35]

The relationship of life chances to the potential for conflict with the criminal justice system is relatively clear: "when an individual's life chances are poor, their likelihood of coming into conflict with the law will be increased".[36] Whether that likelihood is influenced more by the nature of the law, its biases and processes, the risks implicit in a life lived on the margins, or some combination of these factors, remains unclear. Attempts to explain the high rate of conflict with the law experienced by Aboriginal people have focused on the possibility of higher levels of Aboriginal offending and victimization, on the one hand, and on possible discrimination in

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[35] Much of the discussion of demographics and offending patterns is taken from the manuscript entitled ***Will the Circle be Unbroken? Aboriginal Communities, Restorative Justice, and the Realities of Conflict and Change***, currently nearing completion by J. Dickson-Gilmore and C. LaPrairie, 2003.

[36]Elizabeth Comack, ***Women Offenders' Experiences with Physical and Sexual Abuse*** (Winnipeg: University of Manitoba, 1993), quoted in Carol LaPrairie, ***Seen but not Heard: Native People in the Inner City*** (Ottawa: Department of Justice), 1994, p.63.

policing, charging, prosecution, bail, sentencing and parole, on the other. While the most plausible explanation for the over-representation of Aboriginal people probably falls somewhere between these two explanatory poles, it is equally clear that the variation in the social and economic situation of Aboriginal people across the country, and the characteristics of Prairie and other cities, must also enter into any realistic expository framework of aboriginal involvement in criminal activities and their over-representation in the criminal justice system.[37]

The Community Context: Structured Disadvantage and Blocked Mobility

The 1996 Census estimates the number of Canadians claiming "Aboriginal identity" at 799,010 – an increase of 173,390 or 27.7% since the identity category was first used in 1991,[38] and 2.8% of the total Canadian population. Of the Aboriginal Identity group, 66% are Indian, 25.5% Metis, 5.03% Inuit and 3.2% belong to an "other" Aboriginal category. In terms of actual numbers, the largest Aboriginal populations reside in Ontario and British Columbia, but Manitoba and Saskatchewan have more than double the Aboriginal population of any of the provinces (11.7% and 11.4%, respectively), when compared to the non-Aboriginal population. As might be expected, the territories have the highest Aboriginal populations. The Aboriginal population of the NWT is 48.2% of the general population; in the Yukon it is 20.1% and in Nunavut it is 83.9% (Census Canada, 1999). This population is spread across 609 predominantly rural bands, and a burgeoning urban aboriginal population, which currently comprises approximately 71% of the total aboriginal population.

The internal composition of the Canadian aboriginal population reveals important differences

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[37]It should be noted, however, that national, provincial and territorial data that are both comparable and standardized do not exist in Canada. What has been collected over the years is generally piece-meal and time and issue-specific. Trends over time and jurisdiction-comparable data on criminal justice processing are not generally available. This discussion, therefore, is limited in scope (J. Dickson-Gilmore and C. LaPrairie, ***Will the Circle be Unbroken***..., 2003).

[38] However, it should be noted that 77 reserves refused to participate in the census in both 1991 and 1996.

between the aboriginal and non-aboriginal groups. Fully 51% of the Aboriginal population is female, but this varies by place of residence, as more males live on reserve and more females off-reserve. The male/female discrepancy in population is greatest in large cities. There are approximately 6.3% more females than males in urban centers, and this discrepancy is highest for females 25 years of age and over.[39] This discrepancy assumes an additional and interesting dimension when it is recognized that in urban areas, in 1996, over twice (2.4 times) as many Aboriginal as non-Aboriginal children were in single parent families; this is especially so if those children are resident in Thunder Bay, Winnipeg, Regina, Saskatoon or Edmonton. Taken together, these numbers suggest that the majority of those single-parent families were headed by women. When this reality is added to the apparent realities of life in those cities, the challenges facing many urban Aboriginal families and their children become apparent. For example, at the same time that children in these centers are likely to live in female-headed single parent families, Thunder Bay, Winnipeg, Regina, Saskatoon and Edmonton also manifest high concentrations of unemployed people and single parent families in their inner cores. To the degree that these categories overlap, a significant percentage of the next generation of Aboriginal adults face compelling challenges in childhood, despite their parent's search for something better in the city. The research supports this observation; Sampson argues that these two characteristics of inner core areas - single-parent families and high unemployment - reduce the socialization and other options that are available to parents, children and youth in more demographically balanced and economically advantaged Aboriginal and non-Aboriginal areas. This reality, coupled with the population growth described above, promises to present compelling policy challenges over time.

Although Aboriginal people are found across the economic spectrum[40], data indicate that the urban Aboriginal population is generally more mobile, less well educated, less employed and poorer than the non-Aboriginal one. At the same time, however, there appear to be quite distinct

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[39] Statistics Canada, 1999.

[40] Vic Satzewich and Terry Wotherspoon, "Aboriginal People and Economic Relations: Underclass or Class Fractions", in ***First Nations: Race, Class and Gender Relations*** (Scarborough: Nelson Canada, 1993):43-74.

regional differences, with the most disadvantaged, at-risk groups appearing in the Prairie provinces. The Prairie cities of Winnipeg, Regina, Saskatoon and Edmonton maintain the most pronounced employment and income gaps between the Aboriginal and non-Aboriginal populations across Canada (Statistics Canada, 1999). The one exception to this is found in the northern Ontario city of Thunder Bay, where the income and employment gaps are almost as large as in the Prairie cities.

The Prairie cities (Winnipeg, Saskatoon, Regina) and Thunder Bay have the largest, the youngest, the least educated, the poorest and the most mobile Aboriginal populations. By contrast, eastern cities (Halifax, Montreal and Toronto) have the best-educated and the most well off Aboriginal populations. Interestingly, the Prairie cities of Regina, Saskatoon, Winnipeg and Thunder Bay, are similar in their Aboriginal population and socioeconomic profiles, whereas the eastern cities are consistently on the positive side. The cities of Vancouver, and Edmonton to a lesser extent, are closest to the average scores in almost all categories and, therefore, straddle the two more extreme groups of cities.

In exploring the "degree of disparity" between the Aboriginal and non-Aboriginal populations in each of the nine cities, La Prairie found that the most extreme disparity between the two populations is in the Prairie cities followed by Thunder Bay; and the least amount of disparity is found in Halifax, followed by Montreal and Toronto.[41] These findings would suggest that the Aboriginal populations that must feel the least amount of deprivation in relation to their non-Aboriginal neighbours are in the eastern cities. Data on Registered Indians also found that the group that must feel the least deprived in relation to their non-Aboriginal and Aboriginal neighbors is in the eastern cities. To the degree that perceptions of deprivation feed into feelings of hopelessness and despair, it may not be too great a reach to suggest that this may play some part in the greater degree of dysfunction characterizing many urban Aboriginal families in the

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[41] C. Laprairie, ***Aboriginal Over-Representation in the Criminal Justice System: A Tale of Nine Cities*** (Canada: Department of Justice, 1994); see also, Laprairie, ***Seen but not Heard: Native People in the Inner City*** (Canada: Department of Justice, 1994).

Prairie cities. It may also be hypothesized as contributing to the gravitation of some frustrated urban youth in particular to involvement in gangs and other forms of illicit activity as a means by which to gain status and upward mobility (albeit in a deviant structure) within their community.

There is considerable argument to be made that the exodus from rural, reservation communities is very much a part of a push-pull dichotomy which may be seen to characterize many reserves. Faced with significant levels of local unemployment, limited access to upward mobility and, in many cases, substandard living conditions, aboriginal youth in particular feel pushed to respond to the pull of the cities, which promise a better life. The marginality and poverty characterizing the majority of Canadian reserves is well-documented. For example, most reserves obtain the greater share of community income from government transfers, and almost consistently evidence the lowest income overall as well as the largest number of people with less than grade nine education.[42] Physical conditions are also poor. In general, aboriginal housing is desperately below the quality of that experienced by the average non-aboriginal Canadian. Almost one-half of all on-reserve housing fails to meet basic standards of physical soundness, and more than one-third lack such basic amenities as running water, indoor toilet, bath or shower.[43] As well, more than one-third of these homes are seriously over-crowded, a situation which has implications for public health, as well as for levels of frustration and stress. When these factors are combined with a lack of employment opportunities which shows no sign of abating and ameliorating the low on-reserve labour-force participation, and the strains implicit in many communities'

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[42] In real terms, reserves may have the lowest income [illegible]at, interestingly, may not be worse off financially than those in off-reserve areas, largely because of social and housing benefits that may accrue with living on reserve. At the same time, it is apparent that the distribution of these benefits in communities is not always consistent or perceived to be fair, which is certainly problematic and contributes to an additional layer of structured inequality in communities.

[43] See, for example, Andrew J. Siggner, "The Socio-Demographic Conditions of Registered Indians" in Robert A. Silverman and Marianne O. Nielsen (eds), ***Aboriginal People and Canadian Criminal Justice*** (Vancouver: Butterworths, 1992), pp.19-30. On sociodemographics and economics generally, see Vic Satzewich and Terry Wotherspoon, "Social Reproduction and the Welfare State", in Satzewich and Wotherspoon, ***First Nations: Race, Class and Gender Relations*** (Scarborough: Nelson Canada, 1993), pp.75-111.

struggles with the implications of residential school experiences of many of their members, the results are profound and internecine patterns of substance abuse, despair and victimization. Unfortunately, as indicated above, the life encountered in the city is not always superior to that experienced on the reserve.

The genesis of regional and city, between and within-group socioeconomic and other indicators of disparity and disadvantage in the Aboriginal and non-Aboriginal populations are still unclear, yet it seems undeniable that such patterns of exacerbated disadvantage bear some relationship to regional variations in patterns of conflict with the law. Here the American literature on crime and communities may be helpful, insofar as Sherman et al (1998) note that "the causation of inner city crime has received extensive diagnosis", especially in comparison to the much less well-developed Canadian literature. The U.S. research suggests that many factors are implicated in the commission of crime in neighborhoods, including residential instability, and concentrations of poor, female-headed households with children, multi-unit housing facilities and disrupted social networks. These factors, added to a reality of segregation of racial and poverty groups in the most marginalized urban areas, have been demonstrated to foster and support the rise of criminogenic structures and community cultures.[44] In other words, despite the rejection of socioeconomic context as one explanatory factor in aboriginal organized crime, there is a strong case to be made that much criminal behaviour is learned, and thus the failure to address the larger context in which that behaviour is taught and, in some contexts, legitimized, leads to a partial and incomplete understanding of the crime patterns of any group.

Offending Patterns across the Aboriginal Community

The research on aboriginal involvement in crime and disorder is "quite unambiguous about the

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[44] Sherman, Lawrence W., Denise Gottfredson, Doris Mackenzie, John Eck, Peter Reuter & Shawn Bushway. (1998). ***Preventing Crime: What Works, What Doesn't, What's Promising***. A Report to the United States Congress, Prepared for the National Institute of Justice; also, Sherman, L.W. and H. Strang. (1997). "The Right Kind of Shame for Crime Prevention", ***RISE Working Paper: Paper No. 1***, Australian Institute of Criminology.

fact that interpersonal violence, property crime, family problems and other forms of social tension, friction and disorder occur in aboriginal communities at levels far exceeding the national and regional non-aboriginal ones".[45] Rates and patterns of aboriginal conflict and disorder are not only radically disproportionate to the amount of crime in the non-aboriginal population, but that crime is both more violent and predominantly intra-racial. That is, aboriginal people commit more violent, serious offences against the person, and these offences are often perpetrated while the offender is under the influence of alcohol and acting in an unpremeditated, reactive fashion. As well, much of that violence transpires between people who have some pre-existing relationship, as Trevethan in 1993 found that aboriginal victims are much more likely to be assaulted by someone they know than are non-aboriginal victims.[46]

Additional differences characterize aboriginal offending patterns in comparison to non-aboriginal ones. For example, aboriginal women are much more likely than non-aboriginal women (relative to men) to be involved as accused and victims in crime, and to be under the influence of alcohol at the time of the offence.[47] The use of alcohol is, in many respects, a distinguishing feature of aboriginal crime. For example, LaPrairie reports the 1994 findings of Doob et al that revealed that more than half the homicides involving aboriginal victims in Ontario, which were divided almost equally - between on- and off-reserve settings, involve alcohol on the part of both offender and victim. Comparable data for the non-aboriginal homicides was 11%.[48]

Those responsible for these crimes are most likely to be aboriginal men between the ages of 18-

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[45] LaPrairie, in Dickson-Gilmore and LaPrairie, ***Will the Circle be Unbroken?***, op cit.

[46] S. Trevethan, ***Police-Reported Aboriginal Crime in Calgary, Regina and Saskatoon*** (Ottawa: Canadian Centre for Justice Statistics, 1999).

[47] Ibid.

[48] Julian V. Roberts, and Anthony N. Doob. (1994). "Race, Ethnicity and Criminal Justice", in Tonry, M. ***Crime and Ethnicity, Crime and Justice***, Annual Vol. 21 (Chicago: Chicago University Press).

37 years of age who have victimized other aboriginal people, most commonly their partners or spouses. As a general rule, aboriginal youth and adult offenders are younger, and in the case of the latter, have less education and are less likely to be employed than non-aboriginal offenders. These offenders also manifest much higher levels of risk to re-offend and demonstrate much higher need profiles, including histories of family problems, substance abuse and personal and emotional problems. They are also likely to have experienced significantly greater prior contact with with the criminal justice and correctional systems than their non-Aboriginal counterparts.

It is also interesting to note that, despite the view that much aboriginal organized crime is committed on-reserve, this perception does not hold true in regard to aboriginal offending patterns generally. In a groundbreaking study in 1976 of Aboriginal offenders in Manitoba, McCaskill was the first researcher in Canada to note that the majority of Aboriginal offenders were incarcerated for offences committed in off-reserve areas.[49] Twenty years later in a Correctional Service of Canada Aboriginal offender survey, Johnson (1997) found that only 19% were from reserves. However, Johnson also found that slightly over half (51%) of that 19% had grown up in their home community, which suggests that while many offenders were 'from' reserves, they had spent the majority of their lives off-reserve.[50] In this regard, then, it may be hypothesized that participation in such activities as the cross-border trade constitutes an aberration in aboriginal offending patterns and trends, insofar as it is both pre-dominantly an on-reserve phenomenon. However, if one includes in the definition of aboriginal organized crime youth gangs which engage in a wide range of criminal activities predominantly off-reserve, this activity may not only be consistent with more general trends, but also may be 'hidden' in crime statistics that, while recording the crime committed, may not explicitly link gang-related offences as such. In this regard it may be easier to 'track' on-reserve organized activities than it is to distinguish that percentage of off-reserve crime which may rightly be categorized as

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[49] Don McCaskill, "A Study of needs and resources Related to offenders of Native origin in Manitoba: a Longitudinal Analysis" (Ottawa: Correctional Planning Branch, Ministry of the Solicitor General, 1976).

[50] Joseph C. Johnson, ***Aboriginal Offender Survey: Case Files and Interview Sample*** (Ottawa: Research Branch, Correctional Services Canada, 1997).

organized criminal activity.

It is likely that on-reserve organized illicit activities will differ from overall patterns of aboriginal organized crime in other important ways. For example, in the majority of incidents, criminal acts committed by aboriginal offenders are, as noted above, impulsive, opportunistic and perpetrated while under the influence of drugs or alcohol. There is a conspicuous absence of property crimes among these offenders, and the degree of offending which can be clearly linked with a profit motive seems very limited indeed.[51] In other words, the essential motivation of "profit" which Beare and others assign to those who participate in organized crime would seem to be conspicuously absent in aboriginal offending patterns. This is not to suggest that profit is *never* a motive in aboriginal offending, but rather that *current knowledge of such offending indicates that it is a rare motive* and that, in this regard, that organized crime activity which has been most well-documented (i.e., smuggling) reflects either a fundamental shift in the direction and goals of aboriginal offending, which seems unlikely, or that aboriginal participation in organized illicit activities *is not primarily about money*. If, as Beare observes, understanding motivation is crucial to the effective redressing of organized criminal activity, it is crucial that we pursue more vigorously the question of these motives in the rapidly escalating terrain of 'aboriginal organized crime'.

Determining the motivations which inform the choices made by some First Nations peoples to choose alternative, illicit paths is difficult, owing to the limited relevant information available, as well as the limited attention given to the subject of aboriginal crime generally. Beare, for example, has little to say about Aboriginal organized crime, asserting that these activities tend to involve only a small percentage of aboriginal community members who are generally involved

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[51] In fact, if one were to map aboriginal offending patterns on a graph, with a baseline continuum marked by relatively minor public order and administrative offences (i.e., failure to appear, fine default, etc.) and succeeding across the base to much more serious violent crimes, the graph would manifest a pronounced peak over the very minor administrative and public order offences, followed by a significant dip which slowly rises to a second peak over violent crimes against the person.

in "opportunistic crimes":

> In the initial stages of operation, a significant profit-making opportunity is taken advantage of, rather than sought out and developed. However, once the infrastructure of a distribution network is in place alternative commodities can and will be substituted. The smuggling of alcohol, drugs, guns, illegal aliens is a matter of increasing concern for law enforcement. Weapons are of particular concern. What began as the smuggling of guns to support the military activities of a small number of Mohawk communities has become a profit-generating commodity.[52]

Setting to one side the issue of the accuracy of Beare's description of this activity, it is notable that her description offers us nothing in terms of understanding why aboriginal offending patterns are increasingly characterized by a partial shift toward more organized forms, and what may lie behind that shift. Is aboriginal organized crime about profit, or is there something else involved?

Deconstructing Aboriginal Organized Crime: A Typology of Participants by Motivations

There are a number of corollaries which must be respected in any attempt to define a typology of organized crime participants in terms of their respective motivations. First, it is imperative that any effort to engage the phenomenon termed "aboriginal organized crime" be informed with the realities of diversity and difference which are inherent in the aboriginal reality in Canada. Too often, non-aboriginal Canadians refer to 'the Canadian Indian', implying a uniformity across cultures and experiences which is not now, nor has it ever been, an accurate portrayal of First Nations within Canadian borders. There rich diversity of this population is seen in the 50 languages and the 52 cultural groups contained within six major cultural regions in Canada – Woodland, Iroquoian, Plains, Plateau, Pacific Coast and Mackenzie and Yukon River basins. That Canadians could lose sight of this wealth of diversity is not surprising, given the "pan-Indian" nature of the bulk of state policy and the reality that the Canadian constitution

[52] Ibid., p.77.

recognizes only three groups of aboriginal people – Indians[53], Metis and Inuit. Thus, in the same way that there is no single, homogeneous "Canadian Indian", there is no single category of "Indian offender" or single motivation which spawns that category. Like all human beings, aboriginal people who participate in antisocial activities come from a range of backgrounds and cultures, and that participation is informed by a range of motivations, aspirations and contexts. The failure to address such differences in an attempt to understand that participation will leave large gaps in understanding which may well doom any ameliorative approaches.

In like fashion, it is imperative that the study of 'aboriginal organized crime' focuses on the crime and not the cultural group with which it has come to be associated. That is, while it cannot be denied that the epicenter of organized crime activity in an aboriginal context appears to be the Mohawk communities of Akwesasne and Kahnawake, organized crime is neither uniquely aboriginal nor Mohawk. The tendency to ascribe organized crime an ethnic basis may be linked to the reality that much of the early literature in the area concentrated on what is generally accepted to be the 'traditional' organized crime groups such as the 'crime families' of the Italian or Sicilian Mafia, which encouraged the association of organized criminal activities with particular cultures. As well, owing to a common theme in much organized crime literature and theorizing which posits this crime as fundamentally a pursuit of 'outsiders' against 'insiders', or, in the case of theorists such as Lupsha, with "immigrants"[54], there is a tendency to segregate organized criminal activity as something that only "others" do. Even where 'diversity' is accepted as a fact in organized crime, there remains a remarkably entrenched perception that this diversity is that of the outsider:

> ...while there are many other groups – Columbian, Cuban, Mexican, Syrian, Chinese, Afro-American, and WASP – active in organized crime... the Italian-American groups, while withdrawing

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[53] Indian is a term that describes all Aboriginal people in Canada who are not Inuit or Metis. There are three legal definitions that apply to Indians in Canada: Status Indians, Non-Status Indians and Treaty Indians. Many Aboriginal people today find the term "Indian" outdated and offensive. They prefer the term "First Nation". The Indian Act was first passed in 1876 and sets out certain federal obligations, and regulates the management of Indian reserve lands.

[54] Lupsha, "Individual Choice, Material Culture, and Organized Crime", op. cit., pp.3-24.

> from street and direct front-line operations, remain as leading members in the orchestration of organized crime enterprises in the United States.[55]

It is important to challenge this view that organized crime is predominantly an "ethnic crime", as it does not only no longer appear to be so, but in its current incarnation as an equal opportunity crime has attracted the participation of individuals from a wide cultural and class strata – evidence the deep involvement of major cigarette manufacturers such as R.J. Reynolds in the cigarette trade, and that of the large number of 'regular citizens' who provide the market for smuggled goods, both cigarette and other. In other words, we are all implicated by varying degrees in this activity, whether as direct participant, customer or complicit citizens supporting social structures and state policies which make organized criminal activity a rational or reasonable option for some of our peers.

The problem with the 'us-them' view of organized crime is that it has important consequences not only for our policing of those activities associated with it, but for our view of those people and cultures we associate with it as well:

> In various representations of organized crime in criminological articles and policy papers there are some common but on close examination peculiar characteristics. One can summarize these as the simple they-us-dimension: organized crime against us. The they-us-dimension is very often amplified if "they" are of foreign origin. Then there is no doubt: *they* threaten us.[56]

Framed in such a manner, organized crime becomes not a social problem which we as a society share and which requires a broad-based social response, rather, organized crime becomes a problem associated with certain social groups. As such, it can be effectively combated by concentrating on all members of *those groups* as either participants or potential participants. This not only racializes organized crime and responses to it – all Mohawks become potential or

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[55] Ibid., p.4.

[56] Petrus C. Van Duyne, "Organized crime, corruption and power" 26 ***Crime, Law and Social Change*** (1997), p.202.

possible 'buttleggers'[57] – but may obscure the involvement of some of "us" in organized crime. From the vantage point of effective responses to organized crime, the tendency to perceive organized crime as an us-them dichotomy obscures our view of the phenomenon and thereby limits our effectiveness in responding to it. Indeed, it was probably in no small part owing to such a dichotomy, as well as the nature of the power of the corporate elite in our society, that the major tobacco manufacturers were able for so long to avoid accountability for their involvement in the illicit cigarette trade flowing through Akwesasne. It is, in short, much easier to police the aboriginal component of the trade than it is the non-aboriginal part.

The danger of racializing organized crime should not be underestimated, especially in regard to aboriginal participation in such activities. There is an unquestionably racist streak which permeates many Canadians' perceptions of aboriginal people generally, and the association of organized crime with the aboriginal community does further harm to native-non-native relations. This is especially so when quite accurate acknowledgements that *some* aboriginal people engage in *some* illicit organized enterprises are either generalized inaccurately beyond the very small percentage of that community which is either actually involved or quietly complicit, or used to undermine the rightful positions of aboriginal people on matters of treaty or self-government. When particular types of crime are associated with particular groups, this can easily become yet another reason to marginalize them or restrict their entry into Canadian society. The issue, then, is not that some Mohawks participate in smuggling, but rather that *not all of them* do, and the actions of a minority should not become reason to punish the majority – crime among the larger Canadian public is not perceived or responded to in this fashion, so why should it be so among the minority? When those actions are used to denigrate the struggles of minorities to achieve success and to vindicate rights to which they are fully entitled, the negative social and political context which informs some participation in organized crime is enhanced. For example, one must wonder at the motivations behind a rather curious examination of the alleged participation

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[57] See J. Dickson-Gilmore, ***Communities, Contraband and Conflict: Considering Restorative Responses to Repairing the Harms Implicit in Smuggling in the Akwesasne Mohawk Nation*** (Canada: Royal Canadian Mounted Police, Research and Evaluation Branch, Community, Contract and Aboriginal Policing Services Directorate, April 2002), pp.26-32.

of "Mohawk Warriors" in criminal activities in Cornwall, Ontario, in which Thompson reifies in print the views of some community members that organized criminal activities in Cornwall stem may be explained as "multiculturalism's finest hour".[58] Insofar as multiculturalism has long been deemed by a majority of Canadians as one of the better qualities (aspirations?) of our country, it is interesting that the actions of a few Mohawks aided by non-Mohawk corporate interests, could be generalized to support the indictment of multiculturalism generally. Clearly, the 'us-them' approach is not only reactionary and pejorative, but it is also damaging to overall community relationships and to effective responses to organized crime as well, as it undermines the potential for those aboriginal and non-aboriginal citizens and law enforcement personnel to work together to challenge a phenomenon which has negative implications for our shared communities.

There is one final qualification on the typology proposed below. To the degree that human motivations manifest a wide range of forms and permutations, and are often deep-seated and not always apparent to the observer of different activities, it is important to recognize that, in real terms, we can never really be certain about people's motivations for the choices they make. At best, we can only examine those choices, how they are acquitted, and the larger context which informs both, and make 'educated guesses' about why those choices are made. Once again, then, we are moved toward a social context analysis of motivations for involvement in organized crime activities which requires attention to the contextual variables that inform and shape both apparent motivations and the choices they impel.

This typology is based on certain foundational assumptions. First, that aboriginal involvement in organized crime is primarily articulated through the cross-border trade, and less so through gang

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[58] John C. Thompson, "The Long Fall of the Mohawk Warriors", ***Gravitas*** (Summer, 1996), p.17. This article is fascinating in its limited understanding of the warrior complex in Iroquois society in general, and in the genesis of the Warrior Society in communities such as Kahnawake; it is also an intriguing study in the art of generalization, as it fails to acknowledge that warriors, like all people, are a diverse bunch across which there is very large disparity in attitudes toward illicit activities. The politics of the article are, to be fair, absolutely transparent, and to some degree mitigate the strength and impact of the positions it takes.

activities. This focus reflects not only the current state of the research, which manifests only a small amount of information on aboriginal cross-border activity as a form of organized crime, and much less so on aboriginal gangs per se or as a form of organized crime. Thus only brief reference is made to gangs as a possible form of organized crime in the typology, reflecting a further trend in the extant research questioning whether, in fact, this can be rightfully categorized as a form of organized crime. Indeed, the question of aboriginal gangs as a form of organized crime is, like many aspects of this area of study, is in desperate need of additional scholarly attention and study.

Second, the typology emerges from the modified definition of organized crime articulated earlier, which defines organized criminal activity as 'ongoing activity motivated by political, social and/or economic conditions and ends (or some combination thereof), which is articulated through a network of both formal and informal cooperative social relationships whose structure is greater than any single member, with the potential for corruption and/or violence to facilitate the criminal process'.[59] While this definition may be seen as providing a baseline which describes the primary attributes of the overall process of aboriginal organized crime, as will be seen, to the degree that participation in those processes is a function at least in part of the underlying motivations informing individual participation, within each type different aspects of this definition will obtain greater or lesser emphasis.

It should also be recognized that included within the term "formal cooperative social relationships" are the linkages of kin which define much aboriginal community life, especially within the trade in contraband which is reserve-based; these may not apply in significant measure to gang activity, which, given the likelihood that it draws from a largely urban, inner-city base, is more likely to bring together individuals who may have little or no formal kin connection with, or knowledge of, each other outside the gang.

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[59] A modified form of the definition offered by Beare in ***Criminal Conspiracies***, ibid, p.18.

In all cases, the types are not gender specific, and it is expected that both women and men will be found across the typology. As well, the motivations which are reflected in the titles given to each type exist on a continuum within that type, and are part of the larger continuum upon which all the types reside. This larger continuum is one which is bounded by profound nationalism/activism on one end, and almost pure, instrumentalist opportunism on the other; each type has a more or less precise incipience and conclusion on this continuum, and as one moves within the smaller continuum of each type, the motivations and sentiments it contains will progress toward the motivations and sentiments inherent in the type which follows. The continuum may be envisaged as follows:

nationalist/ activist	random/ opportunistic	activist/ opportunistic	criminal/ opportunistic

There may also be some overlap between the types, as individuals may originate their engagement in illicit activity in one type, and gravitate over time into another. For example, an individual may start out as a random/opportunistic, and progress into a criminal/opportunistic – a range of combinations and permutations may emerge, and it is likely that, as knowledge of aboriginal involvement in organized illicit activity progresses, additional types will be added to the typology.

Based upon the current state of knowledge of aboriginal participation in organized crime, it is possible to conceptualize a typology consisting of four "aboriginal organized criminal types" which include the (1) Activist/Nationalist Type; (2) Random/Opportunistic Type; (3) Activist/Opportunistic Type; and (4) Criminal/Opportunistic Type. Each of these types will be defined and discussed in turn.

1)Activist/Nationalist Type: The Activist/Opportunist participates in cross border activities because of a series of firmly held beliefs and convictions about aboriginal rights and the impediments facing their realization. This individual will in most cases be a confirmed and active member of the community's traditionalist group, if there is one, and will be deeply involved with his or her community's history and culture; their

commitment to these things is genuine and heart-felt, and they are likely to view with extreme distaste those participants in cross-border activities who are believed to be motivated purely by personal gain, often at community expense, and who will rationalize their participation as an expression of their culture history or aboriginal rights, usually in the perceived absence of any real knowledge of these things. Like all categories in this typology, the activist/nationalist is a complicated character. Depending upon the community, he or she is likely to view the cross-border trade as a legitimate expression of an aboriginal right, which is rejected and criminalized by the state because (a) it challenges a state monopoly on taxes, duties and border activity generally; (b) it offers a form of income which can counteract state policies directed to the strategic underdevelopment of the community, or at least challenge state control of local economies and development; (c) it may empower aboriginal people and, as such, constitutes a dangerous form of political protest. Many in this type will accept the argument of cross-border rights as a legitimate expression of aboriginal rights, but will also reject the use of violence in the expression of that right, especially against their own people. To the degree that cross-border activity undermines community cohesion, the activist/nationalist will view participation in such organized activity as a necessary evil and one which is unavoidable given state policies of underdevelopment and control over First Nations. To the greatest extent possible, this type of participant in organized criminal activity will try to limit the social network through which they perpetrate this activity to a small circle of trusted, like-minded individuals, and to engage cross-border activities only to the degree necessary to enable them to meet shared community goals, including improved housing, small business development, student loans, etc. Participants in organized crime who approach it consistent with this type are likely to participate in the "tithing system" suggested by Beare, giving a significant percentage of their proceeds from illicit activity to community development funds such as that seen in Kahnawake at the height of the trade in contraband. It is important to recognize that these participants would embrace alternative legitimate means for local economic and social development, if they were adequate and available, and would be open to negotiations to establish a framework for the legitimate expression of their cross-border rights. They engage in

organized crime because they do not see any practicable alternative which carries the same blend of expression of traditional rights and independence, and potential for local economic development.

> While this type recognizes that Canada and the United States have laws against the illicit activity undertaken, these laws are seen as not applicable to citizens who are not of those nations. In this regard, they do not perceive what they are doing as breaking the laws of their own nation, nor do they desire to insult or disrespect Canadian or American law by their activities. They simply see those laws as irrelevant. Given the entrenched political positions which motivate this type, these are the most difficult of individuals to deter from participation in illicit organized activities; they will sacrifice all for the nation, and apprehension gives both the opportunity to communicate their position in a public forum (courts and the media) and may bring a form of martyrdom as well.

(2) Random/Opportunistic Type: This is perhaps the most difficult type to place on the continuum, as they tend to be individuals who are only infrequent participants in the organized illicit enterprise. These are the "one-timers", of whom there is a large and rotating pool, who participate for a wide range of reasons. In some cases they are motivated by the pressures of others who are part of their social network, whether as kin or friend; in other cases they may participate for the experience or thrill; to address an immediate and perhaps fleeting financial need; or as an expression of activism or political protest. A good example of this type is the college student, home for the summer who cannot get a job to fund his or her studies in the fall, who agrees to 'run' a batch of contraband cigarettes as a one-off to raise money for school. Another might be a high school student who agrees to work behind the scenes, counting money, and for whom work in a fast food outlet in a neighboring non-aboriginal community offers neither the thrill or compensation implicit in participation in organized illicit activity.

While this group may be enticed by nationalist arguments, in most cases they understand that they are taking a considerable risk involving themselves in this activity, and are aware that, activism and self-determination notwithstanding, their actions involve law-breaking which may have extreme consequences for their futures. Often they participate

only a single or few times, or for a short period of time, and once they are no longer involved, endure strongly ambivalent feelings or regrets about their participation. Because they are also somewhat ambivalent about their motivations, or are responding to an immediate exigency, these individuals are unlikely to move into line with a more deeply involved type. They will tend to get themselves out, and many are significantly deterred by the fear of apprehension and the stigmatization of a criminal record. In short, these are generally good people in bad situations, and they do not constitute the core of the illicit organization or its network.

Unfortunately, because they tend to be less sophisticated or 'professional' in their limited forays into the world of organized illicit activity, they also tend to be at a higher risk of apprehension by the authorities. They are also more likely to be seen as expendable by those more committed participants in the illicit criminal enterprise, especially those who fall into the criminal/opportunistic type. While they are the 'runners' who are most often caught, they are also the least important cogs in the wheels of most illicit enterprises.

(3) Activist/Opportunistic Type: This is an interesting type of participant in organized illicit activity, as they often begin with some form of nationalist/activist motivations, which over varying degrees of time evolve into a much more selfish motivation. In many cases, they move to a position that, as they are assuming significant risks for the community, they should be compensated at least for their direct costs (gasoline for boats or cars, payments to individuals within the social network which enables access to the illicit activity and commodities, etc.). For some, this will extend also to some limited compensation, and for others there will be much larger demands for compensation. As one moves increasingly to the right of this type, the ratio of percentage of community profit to personal profit will diminish; when personal profit is almost total, the activist/opportunist has moved into the realm of the criminal/opportunistic type.
As one progresses through this type, adherence to activist or nationalist positions as the primary motivators diminishes, but never entirely vanishes, nor does the raising of aboriginal rights positions ever become ingenuine. There remains throughout this type

and across those who occupy it a firm commitment to activism and community betterment, but over time and across type this deteriorates, almost unconsciously, such that this type engages the rationale of "right to be compensated" noted above, or the view that compensation must fall to them owing to their importance in the nation and the activist agenda. In some cases, indeed many cases, large parts of the compensation taken by these individuals are redistributed to community and family members, to pay bills, purchase vehicles, homes or even university educations. Thus the personal gain is not purely financial, it is also a gain in reputation and position in the community. Because the latter is quite important to many of this type, there may be ambivalent support for the tithing system, as this obscures the origins of loans or monetary gifts, and thus carries little or no prestige for the giver. Such gains are very important to this type, who tend to feel they are better positioned to determine which causes or persons should receive such support.

This type is deemed activist/opportunistic because they are activists who are deeply and firmly committed to an agenda of aboriginal rights and self-determination. They do not see any significant contradiction between the explicitly communal nature of those goals and that commitment, and their own self-gains and aggrandizement. Because they believe firmly in their aboriginal rights to cross the border, and to carry and sell goods duty-free, they cannot be deemed to be motivated by criminal tendencies. That they must violate Canadian and American laws in acting on their convictions is not a primary concern, and their perceptions in these regards are consistent with the activist/nationalist position, although as this type progresses toward type 3, they may become less prepared to acknowledge the more noble attitudes toward Canadian and American law expressed by the Activist/nationalists.

This type is motivated by both political and personal agendas, and as such they may be more likely to engage in a sort of 'rational calculus' before participating in organized illicit activities. Because, as one move across this type, personal profit becomes increasingly important, this type may be expected to consider: (1) all practical

opportunities of earning legitimate income, (2) the amounts of income offered by those opportunities, (3) the possibility of being arrested if s/he acts illegally, and (5) the probable punishment should s/he be caught. After making these calculations, this type chooses the act or occupation with the highest discounted return.[60] The political dimension – the 'activist' part of this type – will be articulated in the first and second parts of this calculation, and will focus on the blocked opportunities within and external to the community, and the limited returns available to "Indians on the outside", especially when compared with the very significant gains possible in illicit enterprises.

(4) Criminal/Opportunistic Type: This type is unconcerned about nationalism or activism beyond the degree to which it can be argued to support or qualify his or her activities when called upon to do so either by community members or the state. They are the individuals who are motivated by personal gain, who perceive an opportunity and seize it. They will pay lip service to the activist/nationalist positions, and will be prepared to engage in the transportation of more dangerous, dubious or outright immoral cargo. At the far extreme of this type, and at the end of the continuum, these are the individuals who will smuggle migrants and abandon them mid-stream or in unforgiving winter conditions on the opposite shore; they are also generally willing to enter into relationships with other criminal groups, both organized and less so, if it promises profit. The criminal/opportunistic type is home to the individuals demonized in the media and posing the greatest threat to their communities, as they have lost touch with any communal ethic and are prepared to pervert traditional political philosophies and aboriginal rights to excuse what is often little more than the exploitation of their communities and cultures for self-gain. While they, too, will engage in a rational calculation of criminal choices, this will not include an assessment of legitimate opportunities for gain, but will focus on what are perceived to be the best of a range of

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[60] Gary S. Becker, "Crime and Punishment: An Economic Approach", 3 ***Journal of Political Economy*** (1968), pp.167-217; quoted in Andreas Schloenhardt, "Organized Crime and the Business of Migrant Trafficking", 32 ***Crime, Law and Social Change*** (1999), p.204.

illegitimate opportunities.

Because these individuals are often quickly marginalized even within their own communities, many will depart and gravitate toward the cities, where they quickly access those illicit opportunities available through urban-based gangs, which will also attract many vulnerable individuals who are easily exploited. If they are apprehended and convicted for their criminal activities, they may also access these groups through time served in prison, where gang activity is said to be quite pronounced. Within gangs, the social networks tend not to be predominantly kin-based, although a gang may certainly include some members who are kin, rather these tend to be more or less formalized associations of individuals with corresponding interests, who are either willing or coerced into participation. Like their cross-border counterparts within this type, criminal/opportunists will also invoke the rhetoric of activism and aboriginal rights, both to justify their organization to current and potential members, and to obfuscate the nature of their activities especially upon apprehension. For the most part, the knowledge which informs this rhetoric on the part of gang members is partial and, in many cases, of limited accuracy; it is the culture of 'pan-Indianism' as opposed to that of a given community or nation and is highly instrumentalist in nature. While efforts to estimate the percentage of participants in the illicit market falling into each type have not been generally attempted here, it is important to acknowledge that, of the four types proposed here, the criminal/opportunistic type will be expected to capture the smallest number of those participants.

Again, these types exist on a continuum which is defined by the range of apparent motivations for participating in organized criminal activities. This continuum and the typology are not exhaustive; it is possible to raise questions about other forms of activity which might well fall under the rubric of "organized crime". Indeed, this would seem to be the implication of Thompson's assessment of the Mohawk Warriors, which he argues began as an activist group which subsequently "lost its ideals, grew corrupt, and undermined everything it had set out to achieve". His position seems almost to suggest that aboriginals who organize for the purposes of

engaging in strategic or targeted activism may be deemed "criminal", and he raises the examples of the protests at Ipperwash and Gustafsen Lake as illustrating the criminality of the Warriors. While there can be little doubt that these protests were disturbing and, in the case of Ipperwash, violent, it is difficult to see how responsibility for them can be laid at the feet of the Warriors or those other aboriginal people who were present and involved. Some behaved wrongfully, that is unquestionable, but still others were there engaging in what was, for them, a peaceful and meaningful protest, not a crime. And it is in the translation of legitimate political protest to criminal action that the state silences democracy and undermines the potential for positive social transformation. In short, then, while other types of activities may come into question as falling within a definition of organized crime, we must be cautious about what it is we define as crime in general or organized crime in particular. With special regard to the latter, earlier discussions of what may be taken to comprise organized crime suggest that the term may be out of step not only with the reality of most aboriginal conflict with the law, but further, that its use conjures up questionable stereotypes of organized crime participants which are neither accurate depictions of, or helpful in crafting responses to, 'aboriginal organized crime'.[61] It may be more productive to break out of old categories and conceptualizations of such forms of deviant activity, thereby engaging new questions which may lead us to new, and potentially more effective, answers.

In any discussion of aboriginal participation in organize criminal activity, it is imperative that commentators and researchers keep foremost in their minds the reality that aboriginal organized crime has come about because, for many First Nations people, legitimate alternatives are simply not open to them. This should not be taken to imply that there are not thugs and immoral people – aboriginal and non-aboriginal – who are prepared to step into the fray for personal gain and power, but rather that this is not the major part of the phenomenon. Effective responses to aboriginal participation in organized crime must focus on the criminal/opportunists, for whom effective police strategies should work to magnify risks and undermine profits. For those who engage in organized illicit activities as political protest or nationalism, or who are attempting to

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[61]Personal communication with M. E. LeBeuf, (Research and Evaluation Branch, Community, Contract and Aboriginal Policing Services Directorate, RCMP), 13 August 2003.

respond to a very real need, the answers do not reside in more effective policing or more debilitating consequences for apprehension. For this group – the much larger part of the 'problem'– the most effective ameliorative response is social change. That is, the state move to real and ethical negotiations toward the realization of aboriginal and treaty rights, and must work with First Nations to encourage solid and sustainable economic development in communities and the development of the sound infrastructure necessary to human growth and prosperity. This will remove much of the political or nationalist motivations for engaging illicit enterprises, and will also ameliorate much of the criminogenic conditions characterising too many reserve communities. In so-doing, the state will remove the burden of policing this group from law enforcement, and free the police to deal with the real criminal element which, in aboriginal societies like all others, constitutes a real and compelling threat to all our communities.

Reports Available

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